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No. 486

In the Supreme Court of the United States

OCTOBER TERM, 1947

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

THE CLOYD W. MILLER CO., A CORPORATION AND CLOYD W. MILLER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE APPELLANT

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OPINION BELOW

The opinion of the District Court (R. 26) has not yet been reported.

JURISDICTION

The judgment of the District Court was entered December 1, 1947 (R. 29–30). The petition for appeal was filed on December 17, 1947 (R. 31) and the appeal was allowed on December 17, 1947 (R. 33). Probable jurisdiction was noted by this Court on January 12, 1948. The jurisdiction of this Court is conferred by Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349a.

QUESTIONS PRESENTED

1. Whether Title II of the Housing and Rent Act of 1947, hereinafter called the Act, is unconstitutional because, with the termination of hostilities as proclaimed by the President on December 31, 1946, Congress could no longer exercise its war powers to control rents.

2. Whether the Act contains an unconstitutional delegation of legislative power because it authorizes and directs the Housing Expediter to remove rent controls in any defense rental area if in his judgment the need for continuing maximum rents in such area no longer exists.

3. Whether the Act violates the due process clause of the Fifth Amendment because it excepts from rent control hotels, motor courts, new housing created since February 1, 1947, and housing which was not rented except to a member of the landlord's family between February 1, 1945 and January 31, 1947.

STATUTE AND REGULATION INVOLVED

The pertinent portions of the Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., 1st Sess., and of the Controlled Housing Rent Regulation (12 F. R. 4331), are set out verbatim in the Appendix, *infra*, pp. 40–53.

The Housing and Rent Act of 1947 was enacted on June 30, 1947, and became effective July 1, 1947. Title II of the Act (the only part involved in this case) provided for the maintenance of rent

controls in those areas which were under control pursuant to the Emergency Price Control Act on March 1, 1947 (Section 202 (d)). The Act fixed maximum rents in such areas as those in effect under the Emergency Price Control Act on June 30, 1947, and forbade the demand for or receipt of rents in excess thereof (Section 204 (b)). The Housing Expediter is authorized to make adjustments in maximum rents and, in addition, rent increases of up to 15% by written lease between the landlord and tenant are authorized. (Section 204 (b)). The Housing Expediter is authorized to remove rent controls in any defense rental area if in his judgment the need for such controls no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has otherwise reasonably been met (Section 204 (c)). Excluded from rent control are hotels, motor courts, tourist houses, new housing created on or after February 1, 1947, and housing not rented, except to members of the family of the occupant, from February 1, 1945 to January 31, 1947 (Section 202 (c)).

The Controlled Housing Rent Regulation, issued pursuant to the Act and effective July 1, 1947, similarly fixes the maximum rents for housing accommodations under its control as those in effect on June 30, 1947 (Section 4 (a)) and provides that no person shall demand or receive rents in excess thereof (Section 2 (a)).

STATEMENT

The complaint in this action was filed in the United States District Court for the Northern District of Ohio on July 11, 1947, and alleged that the defendants (appellees herein) were the landlords of certain housing accommodations within the Cleveland Defense Rental Area, subject to the Housing and Rent Act and the Controlled Housing Rent Regulation.[1] It further alleged that the defendants had demanded from the tenants rent in excess of the legal maximum rents. It prayed for a preliminary and final injunction restraining the defendants from demanding or receiving more than the maximum rents. (R. 3–4.)

By a stipulation of facts, the parties agreed that the defendants were the landlords of housing accommodations within the Cleveland Defense Rental Area, and that they had demanded over-ceiling rents from all of their tenants (R. 10–11, 8–10). On July 21, 1947, the District Court, finding that the facts were as stated above and that the defendants had violated the Housing and Rent Act of 1947, granted a preliminary injunction restraining the defendants from demanding or receiving any rent in excess of the maximum rent

[1] Section 1 (a) of the Regulation provides that the areas listed in Schedule A of the Regulation are subject thereto. Cleveland, Ohio is listed in Schedule A, which notes that it was placed under rent control in 1942.

prescribed by the Act and the Regulation (R. 11–12). On August 28, 1947, defendants filed an answer which admitted the factual allegations in the complaint and raised as a defense that the Housing and Rent Act of 1947 was unconstitutional (R. 13–15).

Briefs were filed on the constitutional issues. On November 20, 1947, the District Court issued its opinion (R. 26) on the merits of the action, holding that Title II of the Housing and Rent Act of 1947 was unconstitutional because:

1. With the termination of hostilities as proclaimed by the President on December 31, 1947, Congress could no longer exercise its war powers to control rents.

2. The Act made an unconstitutional delegation of power to the Housing Expediter in that it authorizes him to remove controls in any defense rental area if in his judgment the need for continuing maximum rents no longer exists.

On December 1, 1947, judgment was entered dissolving the preliminary injunction and dismissing the complaint (R. 29–30).

SUMMARY OF ARGUMENT

I

A. The war powers do not end with the cessation of hostilities. Many cases establish that they include the power to remedy the evils which have arisen from the war, and that they continue

for the duration of the emergency resulting from the war. The present statute was enacted under the war powers of Congress to deal with the emergency housing shortage resulting from the war.

B. The facts brought to the attention of Congress, which may be said to be of common knowledge, prove that the housing shortage resulting from the war is still in existence. This is demonstrated, if proof be needed, by the facts as to the sharp decline in residential construction during the war, vacancy rates and the prevailing rentals for uncontrolled housing. The specific finding of Congress that the emergency still exists is thus clearly a reasonable one which this Court will not disregard.

II

Section 204 (c) of the statute, which empowers the Housing Expediter to remove rent controls in areas in which the need therefor no longer exists because of sufficient construction of new housing or a meeting of the demand for rental housing accommodations, does not contain an invalid delegation of legislative power.

III

The statute exempts from rent control hotels, motor courts, transient tourist homes, newly built or newly converted housing, and housing which has not been rented (except to members of the

immediate family of the occupant) between February 1, 1945, and January 31, 1947. The reason for the exemption for hotels, motor courts and tourist homes was because operating costs for such establishments consist largely of personal services the cost of which has risen substantially. The reason for the other exemptions was to bring new rental units into the market and thereby to alleviate the shortage. This classification is not arbitrary, and therefore does not violate the Fifth Amendment.

ARGUMENT

I

THE HOUSING AND RENT ACT OF 1947 IS A VALID EXERCISE OF THE WAR POWERS OF CONGRESS DESPITE THE EARLIER TERMINATION OF HOSTILITIES

The statute here involved is an exercise of the war powers of Congress. The Act continues the control of rents which was commenced by the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. V, 901, *et seq.*), which rested on the war powers, and was maintained by the Price Control Extension Act of 1946 (60 Stat. 664).

At the present time, although fighting has ceased and the President has proclaimed the ter-

mination of hostilities (12 Fed. Reg. 1),[2] the United States has not yet entered into peace treaties with either Germany or Japan, and neither the President nor Congress has acted to end the state of war with those countries. Legally a state of war exists. "The period of war * * * extend(s) to the ratification of the treaty of peace or the proclamation of peace." *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 165; *Hijo* v. *United States*, 194 U. S. 315; *Kahn* v. *Anderson*, 255 U. S. 1; *McElrath* v. *United States*, 102 U. S. 426; *The Protector*, 12 Wall. 700.

Our troops are on foreign soil, occupying the enemy countries to make certain that they will not resume hostilities. We are embarking on a broad program to restore our war-ravaged allies to a fruitful peace-time economy, a program which will impose further strains on our economy. The President recently called a special session of Congress to deal with emergency problems arising out of the war, namely the inflation which has already occurred in this country and the reconstruction of the devastated countries of Europe. Congressional committees are conducting hearings on

[2] On July 25, 1947, the President approved S. J. Res. 123 which terminated certain war statutes. At that time, the President issued a statement in which he declared that "The emergencies declared by the President on September 8, 1939, and May 27, 1941, and the state of war continue to exist, however, and it is not possible at this time to provide for terminating all war and emergency powers."

these problems and on the extension of rent control. Housing accommodations are in such short supply, and rent absorbs such a large part of the ordinary citizen's income, that Congress felt constrained to continue rent control for a further period during the transition from a war emergency to a normal economy.

These well known facts demonstrate that the problems of the war are still with us. It is the Government's position (1) that the emergency war powers of Congress do not end with the cessation of hostilities but that they continue as long as necessary to deal with the emergency resulting from the war, and (2) that that emergency still exists with respect to the shortage of housing and the resultant need for protecting the 16,000,000 tenants and their families living in rent controlled housing[3] against exorbitant rental charges.

A. THE POWER OF CONGRESS TO REGULATE RENTS UNDER THE WAR POWERS CONTINUES FOR THE DURATION OF THE EMERGENCY ARISING OUT OF THE WAR

It is well established that the power to wage war delegated to the Federal Government by the Constitution of the United States (Art. I, Sec. 8) encompasses the exercise of powers far beyond those directly concerned with the waging of a fighting war. Such functions as the fixing of maximum prices and rents (*Bowles* v. *Willing-*

[3] Hearings before Senate Committee on Banking and Currency, 80th Cong., 1st sess., Rent Control, p. 249.

ham, 321 U. S. 503; *Taylor* v. *Brown,* 137 F. 2d 654 (E. C. A.), certiorari denied, 320 U. S. 787; *Brown* v. *Wright,* 137 F. 2d 484 (C. C. A. 4), and the allocation of scarce materials (*Steuart & Bro.* v. *Bowles,* 322 U. S. 398; *Brown* v. *Wilemon,* 139 F. 2d 730 (C. C. A. 5), certiorari denied, 322 U. S. 748) clearly are embraced by it.

It is equally recognized that the exercise of the war powers by Congress is not limited to a period when actual fighting is in progress. That the war powers may validly be exercised so long as the emergency created by the war continues, and include the power to remedy the evils which have arisen from it, was aptly stated at the last term in *Fleming* v. *Mohawk Wrecking and Lumber Co.,* 331 U. S. 111. In that case, which involved the Emergency Price Control Act, the Court declared (p. 116):

> On December 31, 1946, after the creation of the Office of Temporary Controls, the President, while recognizing that "a state of war still exists", by proclamation declared that hostilities had terminated. [Proclamation 2714, 12 Fed. Reg. 1.] The cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton* v. *Kentucky Distilleries and W. Co.,* 251 U. S. 146, 161, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues during that emergency. *Stewart* v. *Kahn,* 11 Wall. 493, 507.

In *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, the facts were that on November 21, 1918, after the Armistice, the President approved the War-time Prohibition Act. This Act not only was passed after the Armistice, but went into effect seven months later on July 1, 1919. The plaintiff, on October 10, 1919, brought suit to enjoin the enforcement of the Act, contending that it had become void because the war emergency had passed. The Court assumed for the purpose of the argument that the existence of a technical state of war did not support the exercise of the war powers (p. 161). It then held that the cessation of hostilities did not end the war power, but that that power included the power "to remedy the evils which have arisen from its rise and progress" (p. 161), and extended for the duration of the emergency. Concluding that the emergency still existed, the Court held the Act valid, even though hostilities had long since ceased. And in *Ruppert* v. *Caffey*, 251 U. S. 264, the Court upheld the Volstead Act, which was passed on October 28, 1919, as an exercise of the war power.[4]

That the war powers may be exercised by Congress to cope with the evils arising out of war has long been settled. *Stewart* v. *Kahn*, 11 Wall. 493,

[4] Appellees' argument below that the authorities cited were concerned only with the continuation of statutes previously passed during hostilities, not with laws passed after the cessation of hostilities, is refuted by *Ruppert* v. *Caffey*, 251 U. S., at 281, 282.

involved a federal statute extending the statute of limitations in the southern states for the period in which actions had been barred because of the Civil War. It was argued that the Act was unconstitutional, but the Court replied (11 Wall. 493, 507):

> In the latter case the power is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, *and to remedy the evils which have arisen from its rise and progress* * * * It would be a strange result if * * * Congress, which had the power to wage war and suppress the insurrection, had no power to remedy such an evil, which is one of its consequences. [Italics supplied.]

In 1923, in *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, the Court sustained the continued operation of the Trading with the Enemy Act, which had originally been upheld as an exercise of the war power,[6] saying (p. 57):

> The next contention of the Trust Company is that the act being a provision for the emergency of war, it ceased with the cessation of war, ceased with the joint resolution of Congress declaring the state of war between Germany and the United States at an end, and its approval by the President, July 2, 1921, and the Proclamation of Peace by the President August 25, 1921. The contention, however, en-

[6] *Central Trust Co.* v. *Garvin*, 254 U. S. 554.

> counters in opposition the view that the power which declared the necessity is the power to declare its cessation, and what the cessation requires. The power is legislative. A court cannot estimate the effects of a great war and pronounce their termination at a particular moment of time, and that its consequences are so far swallowed up that legislation addressed to its emergency had ceased to have purpose or operation with the cessation of the conflicts in the field. Many problems would yet remain for consideration and solution, and such was the judgment of Congress, for it reserved from its legislation the Trading with the Enemy Act and amendments thereto, and provided that all property subject to that act shall be retained by the United States "until such time as the Imperial German Government * * * shall have * * * made suitable provision for the satisfaction of all claims." See *Kahn* v. *Anderson,* 255 U. S. 1, and *Vincenti* v. *United States* (C. C. A., 272 Fed. 114, and 256 U. S. 700).

Again, in *Brown* v. *Wright,* 137 F. 2d 484 (C. C. A. 4), the same thought was expressed in relation to the Price Control Act (p. 489):

> * * * The war powers of the government "* * * inherently carry with them subsidiary faculties to deal comprehensively with all exigencies created by war or arising from its inception, progress and

termination." *Lajoie* v. *Milliken*, 241 Mass. 508, 136 N. E. 419, 423.

To the same effect see *Ex Parte Sichofsky*, 273 Fed. 694 (S. D. Cal.), affirmed, 277 Fed. 762 (C. C. A. 9).

Many decisions in the lower federal courts have held that, despite the cessation of hostilities, the war powers are still operative. Only the decision below in this case is to the contrary. The other district courts in which the question of the constitutionality of the new rent act has been raised have uniformly upheld it. In *Creedon* v. *Mitchell*, No. 7419–O'C, S. D. Calif., decided December 8, 1947 after the decision below, the court stated from the bench in reference to the instant case:

> With reference to the ruling of the Cleveland Court on the constitutionality, practically all of the other district courts in the United States have ruled that it is constitutional. This court has already ruled, and all the judges in this court have ruled that the Act is constitutional.

Similarly in *Woods* v. *Benson Hotel Corp.*, No. 2628 D. Minn., decided January 15, 1948, and *Creedon* v. *Bowman*, No. 6765 W. D. Pa., decided January 6, 1948, the courts, although noting the decision in the instant case, rejected it and held the Act constitutional.

In *Granberry* v. *Creedon*, D. Colo., No. 2266, decided September 11, 1947, the constitutionality of the Rent Act of 1947 was challenged by the plaintiff on almost the identical grounds raised here.

The plaintiff had requested that a three judge court be convened to pass on the issue. Judge Symes denied the request on the ground that there was not even a substantial question as to the validity of the Act. He declared:

> It is rather startling at this late date to the Court to have the question raised as to the constitutionality of any of these well known acts passed under the war powers of the Federal government exercised during the recent emergency, and which, according to my view, is still in existence.

In *Creedon* v. *Stratton*; 74 F. Supp. 170, 173 (D. Neb.) Judge Delehant dismissed a similar contention, declaring:

> In any event, it is without validity in the face of many decisions touching national legislation of a regulatory character during the recent and partially persisting emergency, *Bowles* v. *Willingham*, 321 U. S. 503, 64 S. Ct. 641, 88 L. Ed. 892; *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U. S. 111, 784, 67 S. Ct. 1129; *Porter* v. *Granite State Packing Co.*, 1 Cir., 155 F. 2d 786; *Bowles* v. *Ormesher Bros.*, D. C. Neb., 65 F. Supp. 791, and cases therein cited; as also during, and following, the comparable crisis of 1917–1918, *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 40 S. Ct. 106, 64 L. Ed. 194. This court will not presume to deny the emergent character of the recited considerations, section 201 (b)

of Housing and Rent Act of 1947, supra, which impelled a frankly reluctant (section 201 (a) and (b), id.) Congress to enact the current statute touching rent regulation.

See also *Creedon* v. *Seele*, No. P-943, 945, 950, 960, S. D. Ill., decided July 15, 1947.

Cases upholding or applying other statutes enacted under the war powers since the cessation of hostilities are: *Lewis* v. *Anderson*, 72 F. Supp. 119 (S. D. Cal.), (Sugar Control Extension Act of 1947). *Porter* v. *Shibe*, 158 F. 2d 68 (C. C. A. 10); *Creedon* v. *Warner Holding Co.*, 162 F. 2d 115 (C. C. A. 8) (Price Control Extension Act of 1946, enacted on July 25, 1946, 60 Stat. 664). *Porter* v. *Granite State Packing Co.*, 155 F. 2d 786 (C. C. A. 1); *Bowles* v. *Soverinsky*, 65 F. Supp. 809 (E. D. Mich.); *Bowles* v. *Ormesher Bros.*, 65 F. Supp. 791 (D. Neb.) (Emergency Price Control Act after the termination of hostilities). *Citizens Protective League* v. *Clark*, 155 F. 2d 290 (App. D. C.), certiorari denied, 329 U. S. 787 (Alien Enemy Act after the cessation of hostilities).

The court below declared that Congress did not intend to act under the war power because "the Act is not by any express words or implied provisions tied up with any war powers". (R. 27.) But there is no requirement that Congress indicate under which of its constitutional powers it is acting when it passes legislation. The large ma-

jority of acts passed by Congress contain no declaration of policy, much less a statement as to the constitutional power under which the statute is being enacted.* It could hardly be maintained that they are therefore invalid. The issue is whether the statute can be sustained under the war power, not whether Congress recited that it was acting under that power. "* * * in passing upon constitutional questions the court has regard to substance and not to mere matters of form * * *". *Near* v. *Minnesota*, 283 U. S. 697, 708. See also *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550, 555.

Moreover, Congress did indicate that it was invoking the war power. The declaration of policy in the Act (Section 201 (b)) states that while Congress wishes to terminate at the earliest practicable date all federal restrictions on rents:

> At the same time the Congress recognizes that *an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period,* as well as the attainment of other salutary objectives of the above-named Act [Price Control Extension Act of 1946], it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. [Italics added.]

* For example, of the first 100 statutes passed at the 79th Cong. 2d sess., 90 contained no statement of policy whatsoever.

The "transition period" of course means the period in which the nation is moving from a war to a peace status. By its reference to the objectives of the Price Control Extension Act of 1946,[7] which in turn incorporates the declaration of purpose of the Emergency Price Control Act, Congress made it even clearer that it was acting under the war powers.

The legislative history of the present Act also shows that Congress was consciously exercising the war powers. Representative Wolcott, Chairman of the House Committee on Banking and Currency which drafted the rent bill, explicitly stated that the housing emergency with which the Congress was dealing arose out of the war. He stated: "We do not create any new emergency, but we are realistic in finding that the emergency which was created because of the war continues with us and will continue with us until we get enough rental units to lick it." (Cong. Rec., May 1, 1947, p. 4520.) See also the report of the House Committee on Banking and Currency in reporting the rent bill

[7] See Section 1A of the Extension Act, 60 Stat. 664, Section 901. It will be noted that in its statement of objectives, the Extension Act refers back to Section 1, the original declaration of purposes of the Emergency Price Control Act of 1942, which had as one of its objectives "to prevent a post emergency collapse of values." (56 Stat. 23, 50 U. S. C. App., Supp. V, Sec. 901.) The Price Control Extension Act of 1946, was held to be an exercise of the war powers in *Porter* v. *Shibe*, 158 F. 2d 68, 72 (C. C. A. 10).

(H. Rep. 317, 80th Cong., 1st sess. (1947) p. 1), which stated:

> Federal restrictions on rents on housing accommodations were imposed during the war emergency as one step in preventing undue disturbance to our economic system. The problem of when Federal restrictions on rents can be terminated in the transition period from a wartime-controlled economy to a peacetime free economy is of necessity linked with a consideration of the supply of housing accommodations. Since the two subjects are inseparable at the present time, the committee has considered them together in order to stimulate the production of housing which will in turn accelerate the termination of, and eliminate the necessity for, rent controls.

It is beyond dispute, therefore, that the Congress was aware that it was dealing with a housing emergency born of the war, and it must therefore be presumed that the Congress was meeting this emergency, as it did during actual hostilities, by the exercise of its war powers.

If it were necessary to determine whether the "emergency" recited by the statute should be construed to refer to a war emergency or some peace time emergency only which would render it invalid, by familiar law the former construction should be adopted. "The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between

two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act." *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30; see also *Anniston Mfg. Co* .v. *Davis*, 301 U. S. 337, 351.

B. THE HOUSING EMERGENCY CREATED BY THE WAR STILL EXISTS

That the housing shortage brought on by the war is still in existence is of such common knowledge as to be judicially noticeable. An elaborate factual discussion to prove the obvious would be an imposition on the Court. Here Congress found specifically in Section 201 (b) (*supra*, p. 17) that a housing emergency still exists.[8] As the Court said in *Block* v. *Hirsh*, 256 U. S. 135, in discussing an earlier rent control statute (p. 154):

> But a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect. In this instance Congress stated a publicly notorious and almost world-wide fact. That the emergency declared by the statute did exist must be assumed * * *

[8] In *East New York Bank* v. *Hahn*, 326 U. S. 230, the Court held that it would not question a finding by a legislature in view of the fact that very careful study of the subject had been made by the latter, and long hearings had been held on the bill. Precisely that course was followed in regard to the Housing and Rent Act of 1947. Exhaustive hearings were held by the Senate Committee, which considered ten widely

Neither the court below nor appellees have sought factually to refute either the general finding of Congress or the specific facts, hereinafter set forth, on which it rests. In any event, there can be no question as to the truth of the Congressional finding.

In reporting this Act to the House, the Committee on Banking and Currency recapitulated the various factors creating the housing shortage.[9]

> There are several factors, in addition to the normal increase in population, which have contributed to the existing housing shortage. These include demobilization of a large number of veterans, shifts in population, less intensive use of housing accommodations, amount of new housing construction, trend away from construction of rental units, and change from tenant to owner occupancy.
>
> Heavy demobilization of members of our armed forces, particularly in late 1945 and the first half of 1946, made effective an important demand for housing accommodations. In 1945 an estimated 6,279,000 veterans of World War II were returned to

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varying bills on rent control (Cong. Rec., May 29, 1947, p. 6191), and similar hearings were also held by the House. Hearings before Senate Committee on Banking and Currency, 80th Cong., 1st sess., Rent Control; Hearings before House Committee on Banking and Currency, 80th Cong., 1st sess., on H. R. 2549, Housing and Rent Control.

[9] House Report No. 317, 80th Cong., 1st sess., p. 2.

civilian life, in 1946 the number so returned was 5,659,000, and in 1947 to February 28 an additional 212,000 veterans were demobolized. Statistics are not available as to the number of new family units created by returning veterans but undoubtedly the figure is substantial and in many cases creation of new family units was delayed until these veterans were returned to civilian life. The importance and delayed impact of the 11,938,000 veterans returned to civilian life in 1945 and 1946 on an already acute housing shortage is readily apparent.

During the war years there were important shifts in population to war-industry centers. Between 1940 and 1945 there was an increase of 15.3 percent in the number of urban-occupied dwelling units. The increase in rural non-farm-occupied dwelling units amounted to only 5.3 percent and there was an actual decrease in the number of rural-farm-occupied dwelling units of 11.1 percent.

During the war years many families enjoyed substantial increases in annual incomes. One result of this was a less intensive use of housing accommodations.

The testimony of General Fleming, then Administrator of the Office of Temporary Controls, before the Senate Committee responsible for the

present statute, sets forth the facts in more detail:[10]

> Despite the rapid upswing in residential construction during 1946, the Nation continues to be plagued with a critical housing shortage. The supply of dwelling accommodations, particularly rental units, is still radically out of balance with demand.
>
> The severity of this shortage is strikingly shown in the latest vacancy statistics. In 88 cities surveyed by the Bureau of Labor Statistics and the Bureau of the Census during 1946, vacancies in rental units were virtually nonexistent. The vacancy rates in habitable accommodations for these cities ranged from zero to a maximum of 1 percent, with an average well below one-half of 1 percent. This is in marked contrast to the 5 to 10 percent vacancy rate considered as "normal" in the operation of rental property.
>
> Veterans are particularly hard hit by the housing shortage. According to a survey conducted by the Bureau of the Census, June 1946, about 1½ million married veterans were living doubled up with other

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[10] Hearings before Senate Committee on Banking and Currency, 80th Cong., 1st sess., on Rent Control, pp. 160–162.

See also testimony of General Fleming in Hearings before the House Committee on Banking and Currency, 80th Cong., 1st sess., on H. R. 2549, Housing and Rent Control, p. 5, in which he stated: "The acute housing shortage is still with us, and there is no prospect that a normal rental market will be restored in the country before June 30 of next year."

families. An additional 300,000 were living in rented rooms or trailer camps. In other words, 30 percent of our married veterans were living doubled up or in rooms and trailers, at that time. The overall housing picture is little changed since that time.

What has caused the shortage?

The enormous deficit of housing accommodations existing today results from a combination of contributing economic and social forces set in motion by the war.

First, the net increase in the number of familes is at the highest point for all time. It was at an annual rate of 800,000 in the last half of 1946, and it is estimated that we will have a net increase of considerably over a million this year.

* * * * *

This increase is greater than the net increase in the number of dwelling units which the construction industry has been able to produce, and is one of the reasons why vacancy rates continue to hover around the zero mark, and why we will continue to have an acute problem at least through the middle of next year.

Second, the supply of new houses was curtailed during the war years to permit industrial construction and war production. Homes could be postponed but tanks and warships could not. By the year 1941, residential construction had reached a post-depression peak of 715,000 family units.

But with the war restrictions, the number decreased year by year until 1944, when less than 200,000 units were reported to have been placed under construction. If construction could have continued at the 1941 rate during the war period, at least 1,500,000 more units would have been added than were actually built during the war period.

Third, the enormous volume of internal migration which began with defense activities has swollen the population of many urban areas. Well above 6,000,000 families left their communities. Many of these persons came from rural areas and have remained in crowded industrial centers.

And, finally, the large increase in consumer incomes has accentuated the housing shortage. Many families previously unable to maintain a separate dwelling are able now to afford a place of their own. Similarly, families previously forced for economic reasons to live in substandard or inferior accommodations have been able to move to better quarters.

The pressure today on the housing market is greater than that which occurred during the 1920's. The average increase in the number of families then was only 600,000 per year. In 1947 we are expecting, if the census is correct, a net increase in the number of families nearly double this figure. During the 1920's we had no rent control, with the result that from

December 1917 until December 1921 alone, rents rose 50 per cent on the average. They continued to rise for several years more. In some cities the rents more than doubled.

In the light of this experience, and facing the fact that the inflationary pressures upon rentals are much more powerful now than they were after World War I, it is not difficult to foresee what would happen if present controls on rents were suddenly lifted.

With an inadequate supply of housing on the one hand, and a clamoring demand for family dwellings on the other, the elimination of rent ceilings would result inevitably in skyrocketing rentals. With landlords permitted to charge what the traffic would bear, eviction pressures would become enormous.

The effect of the war upon the construction of new dwelling units is shown by the following table, which lists both the total number of nonfarm dwelling units and the number of permanent (as distinct from temporary) units constructed since 1937:[11]

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[11] The figures for the total units are taken from H. Rept. No. 317, 80th Cong., 1st sess., p. 3, for the years up to 1945, and for 1946 and 1947 from U. S. Bureau of Labor Statistics, *Construction*, December 1947, p. 4. The figures for permanent units are taken from a table submitted by H. E. Riley, Chief, Construction Statistics Division, U. S. Bureau of Labor Statistics, to the Joint House and Senate Committee on Housing, 80th Cong., 2d sess., during his testimony on January 12, 1948 (on file with the Committee but not yet printed).

Year	Total nonfarm dwelling units	Permanent nonfarm dwelling units
1937	336,000	336,000
1938	406,000	406,000
1939	515,000	515,000
1940	603,000	603,000
1941	715,000	707,100
1942	497,000	356,000
1943	350,000	191,000
1944	169,000	141,800
1945	247,000	209,300
1946	776,200	670,500
1947 (11 months)	799,000	794,600

The average number of permanent units built during the four war years 1942–1945 was 224,525, as contrasted with 557,778 during the four previous years.

The resulting scarcity in housing accomodations is illustrated by the percentage of loss in rents due to vacancies. A vacancy rate of five to ten per cent is regarded as normal. (See statement of General Fleming, *supra*, p. 23). The figures for the years 1939 to 1946 are: [12]

	Vacancy rate							
	1939	1940	1941	1942	1943	1944	1945	Year ending June 30, 1946
Apartment houses in 63 cities [1]	8.6	8.1	6.2	2.8	0.9	0.2	0.2	0.2
Small structures in 60 cities [2]	9.1	7.0	4.2	2.1	1.0	0.5	0.5	0.4

[1] An apartment house is a housing structure of more than 4 units.
[2] A small structure is a housing accommodation of 4 or less units.

[12] Hearings before Senate Banking and Currency Committee on Controlling Rent, 80th Cong., 1st sess. (1947) p. 380.

In a survey published by the Bureau of the Census of the Department of Commerce on August 24, 1947, the vacancy rate for rental housing in the 34 metropolitan areas examined was, with only one exception, 1% or less of the total dwellings. In four Ohio areas the average was two-tenths of one percent. The figures for each of the communities are given below.[13] According to

[13] Current Population Reports, Housing, U. S. Bureau of the Census, Series P–71, Report Number 35.

Metropolitan District	*Vacancy rate of rental dwellings*
Akron, Ohio	0.1
Allentown-Bethlehem-Easton, Pa	.1
Atlanta, Ga	.2
Baltimore, Md	.4
Birmingham, Ala	.3
Boston, Mass	.4
Chicago, Ill	.2
Columbus, Ohio	.3
Dallas, Texas	.2
Denver, Colo	.4
Detroit, Mich	—
Los Angeles, Cal	.1
Lowell-Lawrence-Haverhill, Mass	.2
Memphis, Tenn	.7
Minneapolis-St. Paul, Minn	.1
New Haven, Conn	.2
New Orleans, La	.3
New York-Northeastern New Jersey	.1
New York Division	.1
New Jersey Division	.3
Norfolk-Portsmouth-Newport News, Va	1.7
Philadelphia, Pa	.5
Pittsburgh, Pa	.2
Portland, Oreg	1.0
Rochester, N. Y	.1
Salt Lake City, Utah	.2
San Antonio, Texas	.7
San Francisco-Oakland, Calif	.2
Scranton-Wilkes-Barre, Pa	.3
Seattle, Wash	.6
St. Louis, Mo	.3
Toledo, Ohio	.3
Tulsa, Okla	.4

the Bureau of the Census, the vacancy rate of rental dwelling in urban areas in the United States was 0.4% in April 1947, a decrease from 0.9% in November 1945.[14]

A consequence of the housing shortage was that in April, 1947, there were 2,513,000 sub-families (a husband and wife and children, if any) living with another family in the United States, an increase of 364,000 since February 1946.[15]

The effect of the shortage of housing upon rents appears from figures obtained in studies made by the Housing Expediter, comparing rentals on controlled and uncontrolled housing.[16] These studies show that for 77 cities in 17 states rents on newly constructed housing, which is exempted from rent control, averaged $83.15 per month, 69% above the maximum rents for comparable controlled accommodations. Reports from 47 cities in 13 states covering converted rental units show

Metropolitan District	*Vacancy rate of rental dwellings*
Washington, D. C.	.2
Worcester, Mass.	.1
Youngstown, Ohio	.1

[14] Current Population Reports, Housing, Bureau of the Census, Series P–70, No. 1, Tables 1 and 23.

[15] Characteristics of Secondary Families, Bureau of the Census Report, February 5, 1947, Series P–S, No. 15; Current Population Reports, Bureau of the Census, Series P–70, No. 1, Table 20.

[16] The information contained in these studies has been brought to the attention of the Solicitor General, but is unpublished. It serves to give specific content to facts set forth generally in General Fleming's statement, and in the House Committee Report (No. 317, pp. 10–11), and in any event is of common knowledge.

an average monthly rental of $68.94 per unit as against an average of $46.89 for comparable units under rent control, or 47% higher.

In brief, it is clear that there still exists such an acute housing shortage that if rents were left to be determined by the forces of supply and demand, severe hardship would be imposed upon millions of tenants and their families. That this emergency is a direct result of the war is beyond dispute. A housing shortage resulting from the cessation of construction because of the necessity of allocating material to the manufacture of munitions is just as much a result of the war as a shortage created by the military destruction of homes. Congress has felt obliged to deal with this emergency by taking steps to encourage the construction of new houses and to assist veterans and others to finance the purchase of homes. Congress has concluded, and the facts reveal, that such measures alone are not enough, and that the rentals for existing housing accommodations must also be controlled if the people are to be adequately protected from the effect of the war on housing. We think it is significant, in this respect, that at this time and under the same conditions, other civilized nations, including those in which there were no combat operations, are meeting the same problem by regulating rents.[17]

[17] The Bureau of Labor Statistics advises that rent controls are currently in effect in Great Britain, Canada, Australia,

Unquestionably the burden is upon appellees to prove that there is no basis for the Congressional findings that the housing emergency resulting from the war is still in existence.[18] Appellees here have not shown, and cannot show, that the Congressional findings were arbitrary or unreasonable.

II

THE ACT DOES NOT UNCONSTITUTIONALLY DELEGATE POWER TO THE EXPEDITER

The District Court held that the Housing and Rent Act of 1947 was invalid in that it "lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress" (R. 28). The District Court based this conclusion upon the provision of Section 204 (c) of the Act that "the Housing Expediter is hereby authorized and directed to remove any or all maximum rents

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Sweden, Norway, Denmark, Netherlands, and Belgium. This list, which does not purport to be exhaustive, has been checked with the embassies of the named countries. For Great Britain, see the Rent and Mortgage Interest Restrictions Act, 1939 (*32 Halsbury's Laws Continuation Vol. 1939, p. 971*) and Furnished Houses (Rent Control) Acts, 1946. For Canada, the various Orders-in-Council and orders of the Wartime Prices and Trade Board are collected in part 32 of *Emergency Laws, Orders and Regulations of Canada.*

[18] *United States* v. *Carolene Products Co.*, 304 U. S. 144, 148, 152; *Helvering* v. *Davis*, 301 U. S. 619, 640, 641; *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146; *Legal Tender Cases*, 12 Wall. 457, 531; *Stafford* v. *Wallace*, 258 U. S. 495, 521.

before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met".

Insofar as the District Court based its decision upon "lack of uniformity" in the statute because it applied only to certain areas, it is to be observed that the law is just as uniform in its application as the Emergency Price Control Act; indeed, it applies to the same defense rental areas. The validity of the Price Control Act as so applied was sustained in *Bowles* v. *Willingham,* 321 U. S. 503. The war powers of Congress, like the commerce power, are not required to be exercised uniformly throughout the country so long as there is no arbitrary classification. Cf. *Currin* v. *Wallace,* 306 U. S. 1, 13–14; *Hirabayashi* v. *United States,* 320 U. S. 81, 100.

It may also be observed that the subsection found by the District Court to contain an invalid delegation of legislative authority is not that which imposes rent controls, but that which permits the Housing Expediter to remove such controls in specified circumstances. Respondents are thus complaining only of the statutory provision for the termination of rent control in prescribed areas, not of any of the provisions which subject them to regulation.

In any event, insofar as the District Court held that the Act contains an unconstitutional delegation of legislative power in that the Housing Expediter is authorized to terminate rent controls in any area in which there is no longer need for such controls, its decision is in square conflict with *Bowles* v. *Willingham,* 321 U. S. 503. In that case this Court held that the grant of far greater powers under the Emergency Price Control Act to the Price Administrator did not involve an unconstitutional delegation of legislative power. Under that act, in addition to the power to decontrol rents, the Administrator was also empowered to impose controls in new areas and to regulate evictions. Under the original act, Congress directed that maximum rents be fixed in those areas where defense activities resulted or threatened to result in increased rentals inconsistent with the purposes of that Act. This standard as to where rent controls should be imposed was approved in *Bowles* v. *Willingham, supra,* p. 514. Similarly, under the present act, the Housing Expediter is directed to remove the rent controls when "the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations, or when the demand for rental housing accommodations has been otherwise reasonably met." Thus it is not left to the Expediter's unbridled discretion to decontrol particular areas,

but an adequate standard is established to guide him. "The essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective." *Opp Cotton Mills* v. *Administrator,* 312 U. S. 126, 145.

III

THE ACT DOES NOT VIOLATE THE FIFTH AMENDMENT

In their answer, appellees specifically raised as a defense that the Act violates the Fifth Amendment because Section 202 (c) exempts from control hotels, motor courts, transient tourist homes, new housing built or created by conversion since February 1, 1947, and housing which was not rented, except to a member of the landlord's family, between February 1, 1945 and January 31, 1947. It is hardly necessary to cite authority to the effect that Congress may establish reasonable classifications without violating the Fifth Amendment. *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584; *United States* v. *Petrillo,* 332 U. S. 1. "The Fifth Amendment contains no equal protection clause and it restrains only such discriminatory legislation by Congress as amounts

to a denial of due process. * * * Congress may hit at a particular danger where it is seen, without providing for others which are not so evident or so urgent." *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

The reason for differentiating the exempted classes of housing were set forth in the House Committee Report (No. 317, 80th Cong., 1st sess., pp. 13–14), as follows:

> Certain types of housing accommodations are excluded from rent controls. They fall into two categories, namely, (1) where such exclusions will stimulate the provision of sorely needed rental units; and (2) in the case of hotel, tourist home, and motor-court housing accommodations, catering principally to transients, whose costs of operation consist in substantial measure of personal services, which costs have increased considerably.
>
> In the first category are included new construction, housing accommodations converted from existing private residential use into rental housing accommodations providing additional housing accommodations, and housing accommodations not rented (other than to members of the immediate family of the occupant) during the period February 1, 1945, to January 1, 1947, as housing accommodations. The committee believes that this action will provide a stimulus for the construction of new rental

units which are so much in demand and so necessary to the solution of the present housing needs and will give added impetus to the conversion of existing construction into additional rental units, together with bringing on the rental market units not rented during the 24-month period—February 1, 1945, through January 1, 1947.

In the latter case the long nonrental requirement is sufficient, in the judgment of the committee, to exclude rental units which were willfully withheld pending expectation of the termination of rent controls. Existing vacancies, and new vacancies, resulting from deaths and dissolutions of families, were estimated at 945,000 units for 1946, and an added inducement is given to convert or make available such accommodations for rental use. The committee believes that the exclusion from rent controls of this category of potential rental units will have the combined effect of making available quickly substantial numbers of rental units.

The second category consists of hotel accommodations occupied by persons who are provided customary hotel services, motor courts, and tourist homes serving transient guests exclusively. As stated, operation costs in this category consists of approximately 65 percent in the personal services rendered. Since such costs have risen substantially, this category should be excluded, in the judgment of the committee.

An almost identical argument was made and rejected by the Court in *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170, which involved the validity of a New York State statute controlling rents. It was there argued to the Court (p. 195) that:

> The statute denies to the plaintiff the equal protection of the laws. There was no reasonable ground for excluding hotels, lodging houses, new buildings and buildings used for commercial, manufacturing or other business purposes; or for not extending the regulations to cities other than those included when like conditions were conceded to exist.

The Court rejected this argument, declaring (pp. 198–199):

> * * * It is said too that the laws are discriminating, in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property or buildings now in course of erection, &c. But as the evil to be met was a very pressing want of shelter in certain crowded centers the classification was too obviously justified to need explanation, beyond repeating what was said below as to new buildings, that the unknown cost of completing them and the need to encourage such structures sufficiently explain the last item on the excepted list.

A similar argument was also rejected when made against rent control under the Emergency Price Control Act. In *Taylor* v. *Brown*, 137 F. 2d 654, certiorari denied, 320 U. S. 787, the Emergency Court of Appeals held (p. 660):

> The complaint is that the act and regulation discriminate against the housing industry because the act exempts wages, prices in a number of specified industries, and rents of nonresidential real estate and because the regulation exempts from control rents of certain employees and agricultural workers. We find nothing invalid in this classification, however. It is clear that Congress found that a greater need existed for the regulation of residential rents than of those of nonresidential properties or of wages or the charges of the exempted industries. There is a strong presumption that Congress correctly understood the needs of the Nation and that the discriminations which it placed in the act were based upon adequate grounds. *Middleton* v. *Texas Power & Light Co.*, 1919, 249 U. S. 152, 39 S. Ct. 227 * * *"

CONCLUSION

The judgment below should be reversed and the case remanded with instructions to grant the injunction prayed for by the Expediter.

Respectfully submitted.

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JANUARY 1948.

APPENDIX

Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., 1st Sess.

TITLE II—MAXIMUM RENTS

DECLARATION OF POLICY

SEC. 201. (a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures

designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

DEFINITIONS

SEC. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel service such as maid service, furnishing and laundering of linen, telephone and

secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

(d) The term "defense-rental area" means any part of any area designated under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were being regulated under such Act on March 1, 1947.

(e) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

TERMINATION OF RENT CONTROL UNDER EMERGENCY PRICE CONTROL ACT OF 1942

SEC. 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

(b) On the termination of rent control under this title all records and other data used or held in connection with the establishment and maintenance of maximum rents by the Housing Expediter, and all predecessor agencies, shall, on request, be delivered without reimbursement to the proper officials of any State or local subdivision of government that may be charged with the duty of administering a rent-control program in any State or local subdivision of government to which such records and data may be applicable: *Provided, however,* That any such records or data shall be so made available subject to recall for use in carrying out the purposes of this title.

RENT CONTROL UNDER THIS TITLE

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand,

accept or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent or such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations

for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met.

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States and requesting their cooperation in carrying out such provisions.

(f) The provisions of this title shall cease to be in effect on February 29, 1948.

RECOVERY OF DAMAGES BY TENANTS

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided*, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be

a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

MAINTENANCE OF ACTIONS FOR CERTAIN ALLEGED PAST VIOLATIONS

SEC. 207. No action or proceeding, involving any alleged violation of Maximum Price Regulation Numbered 188, issued under the Emergency Price Control Act of 1942, as amended, shall be

maintained in any court, or judgment thereon executed or otherwise proceeded on, if a court of competent jurisdiction has found, or by opinion has declared, that the person alleged to have committed such violation acted in good faith and that application to such person of the "actual delivery" provisions of such regulation would result or has resulted in extreme hardship.

PROPERTY, PERSONNEL, AND APPROPRIATIONS

SEC. 208. (a) The records, property, personnel, and funds, relating primarily to rent control, transferred to the Housing Expediter by or pursuant to Executive Order Numbered 9841, dated April 23, 1947, may be used for the purpose of carrying out the powers, functions, and duties of the Housing Expediter under this title; except that any personnel so transferred who are found to be in excess of the needs of the Housing Expediter for the exercise of such powers, functions, and duties shall be separated from the service.

(b) There are authorized to be appropriated to the Housing Expediter such sums as may be necessary to carry out the provisions of this Act.

EVICTION OF TENANTS

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the

tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;—

(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

(5) the housing accommodations are nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

ADMINISTRATIVE PROCEDURE ACT INAPPLICABLE

SEC. 210. Section 2 (a) of the Administrative Procedure Act, as amended, is amended by inserting after "Selective Training and Service Act of 1940;" the following: "Housing and Rent Act of 1947;".

APPLICATION

SEC. 211. The provisions of this title shall be applicable to the several States and to the Terri-

tories and possessions of the United States but shall not be applicable to the District of Columbia.

EFFECTIVE DATE OF TITLE

SEC. 212. This title shall become effective on the first day of the first calendar month following the month in which this Act is enacted.

SHORT TITLE

SEC. 213. This Act may be cited as the "Housing and Rent Act of 1947".

The pertinent portions of the Controlled Housing Rent Regulation, 12 F. R. 4331, provide as follows:

> SEC. 2. (a). *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings, or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.
>
> SEC. 4. (a). *Maximum rents in effect on June 30, 1947.*—The maximum rent for any housing accommodation under this regula-

tion (unless and until changed by the Expediter as provided in section 5) shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

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